United Nations S/2002/732

Security Council

Distr.: General
8 July 2002

Original: English

Letter dated 5 July 2002 from the Secretary-General addressed to the President of the Security Council

In accordance with article 4, paragraph 13, of the Algiers Peace Agreement (S/2000/1183, annex) of 12 December 2000, the Eritrea-Ethiopia Boundary Commission has transmitted its decision regarding the "Request for Interpretation, Correction and Consultation" submitted by the Federal Democratic Republic of Ethiopia on 13 May 2002 to the parties and to the Secretaries-General of the Organization of African Unity and the United Nations for publication. The decision and transmittal letter, dated 28 June 2002, are annexed to the present letter.

I should be grateful if you could bring this to the attention of the Council members.

(*Signed*) Kofi A. **Annan**

02-46492 (E) 090702

Annex

Letter dated 28 June 2002 from the Registrar of the Eritrea-Ethiopia Boundary Commission addressed to the Secretary-General

Article 4, paragraph 13, of the Agreement of 12 December 2000 between the Federal Democratic Republic of Ethiopia and the State of Eritrea provides as follows:

> "Upon reaching a final decision regarding delimitation of the borders, the Commission shall transmit its decision to the parties and Secretaries-General of the OAU and the United Nations for publication".

In the spirit of the language of the 12 December 2000 Agreement, the President of the Boundary Commission has requested me to transmit to you and to the Secretary-General of the Organization of African Unity the attached text of the Commission's 24 June 2002 decision regarding the "Request for Interpretation, Correction and Consultation" submitted by the Federal Democratic Republic of Ethiopia on 13 May 2002 (see enclosure).

(*Signed*) Bette E. **Shifman**
Registrar of the Boundary Commission

Enclosure

Decision Regarding the "Request for Interpretation, Correction and Consultation" submitted by the Federal Democratic Republic of Ethiopia on 13 May 2002

1. On 13 May 2002 the Commission received from the Government of Ethiopia a submission entitled "Request for Interpretation, Correction and Consultation". On 21 May 2002, the request was sent to the Government of Eritrea for its observations. These were received on 14 June 2002.

2. Section II of the submission is headed "Issues for Interpretation, Correction or Consultation". The Section refers specifically to the following matters: "Towns and Villages along the Boundary"; "River Confluence Points"; "Identification of Geographical Features"; "Fort Cadorna"; "Area between Point 17 and Point 18"; "Headwaters of Rivers"; "Tserona and Zalambessa"; "The Endeli Projection"; "River Boundaries"; "Nature and Variation of the Terrain"; and "Bure".

3. In the case of "*Towns and Villages along the Boundary*", Ethiopia requests "that the Commission be consistent in applying its analysis of the conduct of the Parties to accommodate areas lying along the boundary".

4. With respect to "*River Confluence Points*", Ethiopia observes, without giving particulars, that "the location of the confluence of the Setit and Mai Tomsa and the co-ordinates provided for that point in the Decision do not agree and "requests that the Commission address during the demarcation phase the question of confluence points and identify the specific principles applicable to the determination of the precise

location of such „points". Ethiopia further requests "that careful field work be undertaken during the demarcation phase so as to ensure that relevant rivers and streams are properly identified".

5. As to "*Identification of Geographical Features*", Ethiopia states that "during demarcation, the Commission, working with their experts and the Parties, will conduct careful field surveys to locate geographical features relevant to the determination".

6. As to "*Fort Cadorna*", Ethiopia contends that the Commission's references to this location are based on a geographical error and requests the Commission to correct the location and make the necessary adjustments to the boundary during the demarcation phase.

7. As to the "*Area between Points 17 and 18*", Ethiopia concludes that it "anticipates that the location of the Acran region will be more precisely defined during the demarcation phase".

8. As to the "*Headwaters of Rivers*", Ethiopia requests that the Commission address during the demarcation the definition of the source of watercourses.

9. As regards "*Tserona and Zalambessa*", Ethiopia requests the Commission to "identify the relevant criteria for the definition of a town's 'outer edge', in consultation with its experts and the Parties during the demarcation phase".

10. As to the "*Eadell Projection*", Ethiopia anticipates that during the demarcation phase the Commission will describe with greater precision the boundary between Points 22 and 26 in the light of the description in paragraph 4.85 of its Decision.

11. As to "*River Boundaries*", Ethiopia understands that during the demarcation phase the Commission will address, in consultation with the Parties, the principles applicable to the determination of river boundaries, including the factors that will determine the main channel of a river.

12. As to "*Nature and Variation of the Terrain*", Ethiopia requests the Commission to develop during the demarcation phase the criteria that it will observe in making any adjustment to the boundary on the basis of the nature and variation of the terrain.

13. As to "*Bure*", Ethiopia requests that the Commission consult with the Parties in determining the proper placement of Point 40.

14. Section III of the Ethiopian submission is headed "Consultation with the Parties" and contains a statement of "Ethiopia's views regarding the conduct of the demarcation phase".

15. Section IV of the Ethiopian submission is headed "Transfer of Territorial Control and Governmental Authority". Its opening sentence states that "As questions have arisen since April 13 regarding the effect of the Commission's Decision with respect to transfer of territorial control and governmental authority Ethiopia wishes to set out its views for the Commission's consideration".

16. The Ethiopian request appears to be founded on a mis-apprehension regarding the scope and effect of Articles 28 and 29 of the Commission's Rules of Procedure. The facility accorded to the Parties in Article 28(1) to request the Commission to give an interpretation of the Decision may only be invoked where the meaning of some specific statement in the Decision is unclear and requires clarification in order that the Decision should be properly applied. The concept of interpretation does not open up the possibility of appeal against a decision or the reopening of matters clearly settled by a decision. The Commission, through its President, has already stated "that the provisions of Articles 28 and 29 of the Rules of Procedure neither allow substantive amendment nor affect the binding quality of the Decision as rendered on 13 April 2002. Re-argument of the case is not permitted." In this respect, the Commission is adhering to the authoritative views on the limits of interpretation expressed by the Permanent Court of International Justice in the *Chorzow Factory Case (1927, PCIJ, Series A No. 13, at p.21)* and the Arbitration Tribunal in the *Arbitration on the Delimitation of the Continental Shelf (France-UK), Interpretation Decision of 14 March 1978 (Vol.54, International Law Reports, 1979, at p. 161)*. "Interpretation is a process that is merely auxiliary, and may serve to explain, but may not change, what the Court already settled with binding force as *res judicata*."

17. The Commission does not find, in any of the items that appear in Section II of the Ethiopian request, anything that identifies an uncertainty in the Decision that could be resolved by interpretation at this time. The same is true of Sections III and IV. Nor is

any case made out for revision. Further, the Conclusions of the request are not so expressed as to invite the Commission to interpret or revise the Decision in any specific respect by reference to applicable considerations of international law or the actual terms of Articles 28 and 29 of the Rules of Procedure.

18. Accordingly, the Commission concludes that the Ethiopian request is inadmissible and no further action will be taken upon it. It will, however, remain on the record of the Commission as a statement of Ethiopia's views on the matters therein mentioned; and the response of Eritrea of 14 June 2002 will also remain on the record as a statement of Eritrea's views on the matters raised in the Ethiopian request. To the extent that the Commission may deem appropriate, some of these matters may be considered further during the demarcation, pursuant to the Decision of 13 April 2002.

(*Signed*) Sir Elihu **Lauterpacht**
President of the Eritrea-Ethiopia
Boundary Commission
24 June 2002